IN THE SUPREME COURT OF THE STATE OF ALASKA

RESOURCE DEVELOPMENT COUNCIL FOR ALASKA, INC.; ALASKA TRUCKING ASSOCIATION, INC.; ALASKA MINERS ASSOCIATION, INC.; ASSOCIATED GENERAL CONTRACTORS OF ALASKA; ALASKA CHAMBER; and ALASKA SUPPORT INDUSTRY ALLIANCE, Appellants and Cross-Appellees, v. KEVIN MEYER, in his official capacity, as Lt. Governor of the State of Alaska; GAIL FENUMIAI, in her capacity as Director of the Alaska Division of Elections; the STATE OF ALASKA, DIVISION OF ELECTIONS, Appellees, v. VOTE YES FOR ALASKA'S FAIR SHARE, Appellee and Cross-Appellant.	)	Supreme Court No. S-17834

Trial Court Case No. 3AN-20-05901CI

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE THOMAS A. MATTHEWS, PRESIDING

APPELLANTS' OPENING BRIEF

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AUTHORITIES PRINCIPALLY RELIED UPON

Alaska Statute 15.45.110. Circulation of petition; prohibitions and penalty.

(a) The petitions may be circulated throughout the state only in person.

(b) [Repealed, § 92 ch 82 SLA 2000.]

(c) A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.

(d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

(f) In this section,

(1) "organization" has the meaning given in AS 11.81.900;

(2) "other valuable thing" has the meaning given in AS 15.56.030(d);

(3) "person" has the meaning given in AS 11.81.900.

Alaska Statute 15.45.130. Certification of circulator.

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted. The affidavit must state in substance

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;

(2) that the person is the only circulator of that petition;

(3) that the signatures were made in the circulator's actual presence;

(4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

I. JURISDICTION

Plaintiffs-Appellants Resource Development Council for Alaska, Inc.; Alaska Trucking Association, Inc.; Alaska Miners Association, Inc.; Associated General Contractors of Alaska; Alaska Chamber; and Alaska Support Industry Alliance appeal from the July 17, 2020 Final Judgment of the Alaska superior court, Judge Thomas Matthews. This Court has jurisdiction pursuant to AS 22.05.010 and Appellate Rule 202(a).

II. PARTIES

The following individuals and organizations are the parties to this case:

Appellants are Resource Development Council for Alaska, Inc.; Alaska Trucking Association, Inc.; Alaska Miners Association, Inc.; Associated General Contractors of Alaska; Alaska Chamber; and Alaska Support Industry Alliance (collectively "Resource Development Council").

Appellees are Kevin Meyer, in his capacity as the lieutenant governor of Alaska; Gail Fenumiai, in her capacity as Director of the Alaska Division of Elections; State of Alaska, Division of Elections (collectively "State"); and the ballot group Vote Yes For Alaska's Fair Share ("Fair Share").

III. ISSUES PRESENTED

1. Decisions of the U.S. Supreme Court require a party seeking to invalidate on First Amendment grounds a state restriction on petition circulators to demonstrate the burden that the restriction places on free speech. Did the superior court err in holding unconstitutional under the First Amendment Alaska's cap on circulator payment,

AS 15.45.110(c), without Fair Share producing evidence of the burden, if any, that the statute places on circulators?

2. Alaska Statute 15.45.130 provides that a circulator certifies a petition by stating in an affidavit compliance with certain Alaska petition-circulation rules, and that in determining the sufficiency of a petition for ballot access, the lieutenant governor may not count subscriptions on petitions not "properly certified." Did the superior court err in ruling that a petition is "properly certified" if a circulator's certification falsely states compliance with Alaska petition-circulation rules, and that the lieutenant governor must count the subscriptions contained in that petition, even if supported by a false affidavit?

3. Did the superior court err in holding that AS 15.45.130's invalidation of petition subscriptions not properly certified by a circulator affidavit unconstitutionally infringes on the petition signers' free speech and voting rights?

4. Did the superior court err by not ruling that petitions are not "properly certified" if the certification affidavits contain false statements of compliance with Alaska's cap on circulator payment and that the State may invalidate the subscriptions contained within those petitions?

IV. STATEMENT OF THE CASE

A. Introduction

This case is about upholding Alaska's rules governing ballot initiative petitions, the Alaska Legislature's authority to regulate petition circulation, and the integrity of the initiative process. Without the benefit of any evidence below, the superior court invalidated as an unconstitutional abridgment of First Amendment rights two Alaska

statutes that regulate and protect the integrity of the initiative process. As courts have recognized, petition circulators, the individuals who solicit residents to sign in support of an initiative, are central to protecting the integrity of the initiative process. Circulators interact with residents, seeking to collect sufficient signatures (subscriptions) for the initiative to be placed on the ballot for the consideration of voters. Like many states, Alaska passed statutes regulating, among other things, circulator compensation, AS 15.45.110(c), and requiring circulators to support petitions they have circulated with a Certification Affidavit stating compliance with the petition-circulation rules, AS 15.45.130. In a sweeping decision, based on zero evidence, the superior court erroneously invalidated both of these statutes as unconstitutional infringements of free speech, and thereby left in tatters Alaska's statutory oversight of the initiative process.

AS 15.45.110(c) provides in full: "A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition." The superior court below correctly interpreted this provision as prohibiting the compensation of circulators in excess of $1 a signature collected regardless of how the ballot group attempts to structure the payment (*i.e.*, hourly, salary, or per-signature basis of compensation). But the Court then invalidated AS 15.45.110(c) as an unconstitutional abridgment of the ballot group Fair Share's free speech rights. The superior court reached this sweeping conclusion as a matter of law, without the benefit of a shred of evidence that AS 15.45.110(c) burdens petition circulation. U.S. Supreme Court and other federal court precedent requires a party seeking to invalidate a state statute

regulating circulators as unconstitutional to demonstrate the burden it places on signature-gathering efforts. The superior court ignored this precedent and ruled unconstitutional Alaska's $1 per-signature cap on circulator payment based solely on the trial court's own speculation that the amount was too low and would make circulators *de facto* volunteers. Fair Share failed to present and there is no evidence in the court record that AS 15.45.110(c) places an undue burden, or any burden whatsoever, on signature gathering efforts in Alaska.

AS 15.45.130 provides that a circulator must certify each petition containing signatures/subscriptions with statements of compliance with petition-circulation rules. It further provides that "[i]n determining the sufficiency of a petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted." The superior court erroneously interpreted this provision to mean that a circulator "properly" certifies a petition so long as the circulator completes the certifications, even if he or she submits a false certification. In the superior court's view, a petition is "properly certified" if a circulator falsely states compliance with petition-circulation rules.

That ruling runs afoul of this Court's decisions on statutory construction by making the word "properly" superfluous in AS 15.45.130. The superior court's interpretation effectively modifies AS 15.45.130 from "the lieutenant governor may not count subscriptions not *properly* certified" to "the lieutenant governor may not count subscriptions not certified." The superior court came to this interpretation by letting its discomfort with AS 15.45.130's remedy—invalidation of subscriptions contained in

petition booklets—taint its statutory analysis. This was error, as this Court has repeatedly taught that the objective of statutory construction is to discern the Legislature's intent, not the reading most palatable to the superior court.

Recognizing that this Court may reverse his interpretation of AS 15.45.130, Superior Court Judge Matthews also issued an alternative holding on AS 15.45.130. The superior court ruled that if AS 15.45.130 permits the State to invalidate signatures contained in petition booklets that are supported by false circulator statements, then it unconstitutionally abridges the rights of the *signatories* to the petition. This holding is plainly wrong. Courts have uniformly rejected the idea that the U.S. Constitution or state constitutions grant to subscribers the right to vote on a *proposed* petition. Signing an initiative petition is not akin to voting, and courts recognize that no voter is disenfranchised when signatures to a petition are invalidated due to a circulator's noncompliance with statutory requirements.

Resource Development Council respectfully requests this Court reverse the superior court's erroneous invalidation of AS 15.45.110(c) and AS 15.45.130, and hold that the proper interpretation of AS 15.45.130 renders invalid signatures supported by a false circulator affidavit. In the superior court, Appellants submitted undisputed evidence that all 24 of the professional circulators hired by Advanced Micro Targeting, Inc. ("AMT") to collect subscriptions on behalf of Fair Share and the 19OGTX initiative were paid in excess of AS 15.45.110(c)'s payment cap. All of these 24 AMT-paid circulators were paid in excess of $1 per signature for the collection of signatures on a petition. Moreover, Appellants submitted these circulators' Certification Affidavits, which show that all AMT-

paid circulators had falsely certified in their Certification Affidavits that they had gathered the signatures while complying with AS 15.45.110(c)'s payment cap. Those certifications are all false and not proper. Resource Development Council asks this Court to enforce AS 15.45.110(c) and AS 15.45.130, and hold that the lieutenant governor may not count subscriptions contained in petition booklets that are supported by false certifications.

B. Factual and Procedural Background

On October 15, 2019, Lieutenant Governor Meyer certified that the 19OGTX initiative application was in proper form and had the sufficient number of sponsors to advance the initiative to the signature gathering stage.[1] On October 23, 2019, the Division of Elections released the printed petition booklets to Fair Share to gather the necessary signatures to put 19OGTX on the ballot. [Exc. 004][2]

In October-November 2019, Fair Share hired Texas Petition Strategies, LLC ("TPS") and Advanced Micro Targeting, Inc. to conduct most of Fair Share's signature-gathering effort in support of the 19OGTX initiative. [Exc. 224][3] TPS is a Texas company based out of the Dallas area, and AMT is a Nevada corporation based out of Las Vegas. [Exc. 224][4] The filings below explain the contractual relationship between TPS and AMT,

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1 *See* Letter from Kevin Meyer to Robin Brena (Oct. 15, 2019) (available online at lieutenant governor's official website: http://www.elections.alaska.gov/petitions/19OGTX/19OGTX%20-%20Sponsor%20Application%20letter.pdf).

2 *See* Alaska Division of Elections Initiative Petition List (available online at the Division of Elections official website: http://www.elections.alaska.gov/Core/initiativepetitionlist.php#19OGTX).

3 Plaintiffs' Memorandum in Support of Motion for Summary Judgment at 3-4 (July 6, 2020) (filed under seal).

4 *Id*. at 3-4.

but it suffices for purposes of this background that TPS did not gather signatures, and AMT did. [Exc. 224]

AMT paid 24 circulators to gather signatures in support of 19OGTX. [Exc. 224][5] These 24 circulators submitted 30,232 subscriptions in support of the initiative, which amounted to 67% of the 44,881 total subscriptions Fair Share submitted in support of 19OGTX. [Exc. 224][6] Ultimately, the lieutenant governor invalidated 4,367 of the 30,232 AMT-gathered signatures, leaving 25,865 total qualifying signatures gathered by AMT in support of the initiative. [Exc. 224][7] It is these 25,865 signatures that are at issue in their appeal.

Below, Resource Development Council obtained payment records from AMT[8] and, using the Division of Elections' petition records, calculated how much compensation each

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[5] Plaintiffs' Memorandum in Support of Motion for Summary Judgment. At the outset of the litigation, the parties entered into a standard protective order governing documents exchanged in discovery. [R. 156-166] When AMT and Fair Share produced discovery, they marked every document as "Confidential," which under the terms of the protective order required the documents themselves and any court filing discussing the specific contents of those documents to be filed under seal. [R. 156-165] Resource Development Council moved to have these documents unsealed in the superior court because the public is entitled to see how much Fair Share paid professional petition circulation companies to collect the signatures, and how much AMT paid each of its circulators to travel to Alaska to collect the signatures. [R. 127-134] While that motion to unseal was ripe in the superior court, the court did not rule on it. [R. 32-38] Resource Development Council cites and discusses only the non-confidential portions of Plaintiffs' Memorandum in Support of Motion for Summary Judgment, and cites to these portions by providing the full name of the pleading and the page pinpoint.

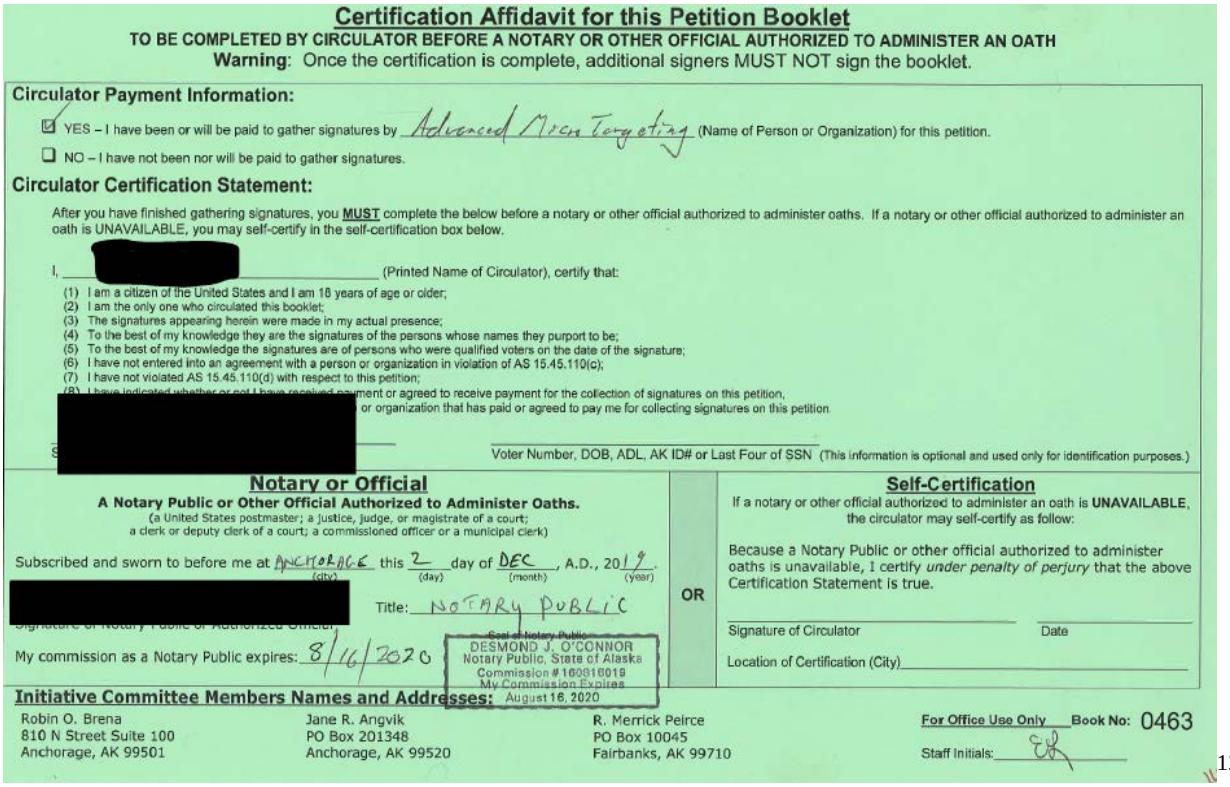
[6] *Id*. at 7-8; *see also* Exhibit C at 15-31 to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

[7] *Id*. at 7.

[8] Exhibit D to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

AMT-paid circulator received on a per-signature basis. [Exc. 224][9] AMT-paid circulators received between $1.79 and $68.72 for each signature gathered. [Exc. 224][10]

Moreover, every one of these AMT-paid circulators signed Certification Affidavits swearing that they had gathered the signatures in compliance with AS 15.45.110(c)'s payment cap. [Exc. 224][11] Below is an example of the AMT-paid circulator's certifications:



Certification Affidavit for this Petition Booklet

TO BE COMPLETED BY CIRCULATOR BEFORE A NOTARY OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER AN OATH

Warning: Once the certification is complete, additional signers MUST NOT sign the booklet.

Circulator Payment Information:

☑ YES – I have been or will be paid to gather signatures by Advanced Micro Targeting (Name of Person or Organization) for this petition.

☐ NO – I have not been nor will be paid to gather signatures.

Circulator Certification Statement:

After you have finished gathering signatures, you **MUST** complete the below before a notary or other official authorized to administer oaths. If a notary or other official authorized to administer an oath is UNAVAILABLE, you may self-certify in the self-certification box below.

I, [redacted] (Printed Name of Circulator), certify that:

(1) I am a citizen of the United States and I am 18 years of age or older;
(2) I am the only one who circulated this booklet;
(3) The signatures appearing herein were made in my actual presence;
(4) To the best of my knowledge they are the signatures of the persons whose names they purport to be;
(5) To the best of my knowledge the signatures are of persons who were qualified voters on the date of the signature;
(6) I have not entered into an agreement with a person or organization in violation of AS 15.45.110(c);
(7) I have not violated AS 15.45.110(d) with respect to this petition;
(8) I have indicated whether or not I have received payment or agreed to receive payment for the collection of signatures on this petition, and the name of the person or organization that has paid or agreed to pay me for collecting signatures on this petition.

[redacted] Voter Number, DOB, ADL, AK ID# or Last Four of SSN (This information is optional and used only for identification purposes.)

Notary or Official

A Notary Public or Other Official Authorized to Administer Oaths.
(a United States postmaster; a justice, judge, or magistrate of a court; a clerk or deputy clerk of a court; a commissioned officer or a municipal clerk)

Subscribed and sworn to before me at ANCHORAGE (city) this 2 (day) day of DEC (month), A.D., 2019 (year).

[redacted] Title: NOTARY PUBLIC

Seal of Notary Public: DESMOND J. O'CONNOR Notary Public, State of Alaska Commission # 160818019 My Commission Expires August 16, 2020

My commission as a Notary Public expires: 8/16/2020

OR

Self-Certification

If a notary or other official authorized to administer an oath is **UNAVAILABLE**, the circulator may self-certify as follow:

Because a Notary Public or other official authorized to administer oaths is unavailable, I certify *under penalty of perjury* that the above Certification Statement is true.

Signature of Circulator Date

Location of Certification (City)

Initiative Committee Members Names and Addresses:

Robin O. Brena, 810 N Street Suite 100, Anchorage, AK 99501
Jane R. Angvik, PO Box 201348, Anchorage, AK 99520
R. Merrick Peirce, PO Box 10045, Fairbanks, AK 99710

For Office Use Only Book No: 0463

Staff Initials:

[12]

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9 *Id*. at 8-9; Exhibit E to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

10 *Id*. at 8-9; Exhibit E to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

11 Exhibit A to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

12 Exhibit A at 271 to Plaintiffs' Memorandum in Support of Motion for Summary Judgment.

On March 17, 2020, Defendant Lieutenant Governor Kevin Meyer issued his decision certifying 19OGTX for the November 3, 2020 general-election ballot. [Exc. 019-021] AS 15.45.240 provides that a person aggrieved by a lieutenant governor's certification decision "may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given." Resource Development Council filed this lawsuit within that timeframe on April 10, 2020. [Exc. 001-009] On April 17, 2020, Resource Development Council moved the superior court to grant expedited consideration of its motion to deem the lawsuit "non-routine" and to expedite discovery and a decision. [R. 482-486] On May 26, 2020, the superior court ruled that Appellants were permitted to seek discovery from Fair Share and its professional circulator contractor AMT. [R. 209-213] Appellants issued discovery requests to Fair Share and domesticated and served a subpoena on AMT in Las Vegas, Nevada. [R. 367]

At the same time that Resource Development Council was pursuing discovery from Fair Share and AMT [R. 357-369], the parties were litigating dispositive motions. The State and Fair Share filed motions to dismiss, and Resource Development Council filed a cross-motion for summary judgment. [Exc. 22-35, 75-104, 118-174]

On July 6, Resource Development Council filed a motion for summary judgment asking the superior court to invalidate the 25,865 qualifying signatures AMT-paid circulators had submitted and supported with Certification Affidavits that falsely stated compliance with AS 15.45.110(c)'s payment cap. [Exc. 221-223; 224][13] That motion was

[13] Plaintiffs' Memorandum in Support of Motion for Summary Judgment (July 6, 2020).

filed under seal because AMT and Fair Share had marked their contracts showing how much Fair Share paid to have the signatures gathered by a professional company as "confidential" pursuant to a protective order governing discovery. [Exc. 224][14] This motion for summary judgment contains all of the necessary evidence that all AMT-paid circulators were paid in excess of AS 15.45.110(c)'s payment cap and all AMT-paid circulators falsely swore on their Certification Affidavits they had gathered the signatures while abiding by the payment cap. [Exc. 224][15] In its response in opposition, Fair Share did not dispute the amount of compensation of AMT-paid circulators, how many signatures each AMT-paid circulator submitted to the State, or that they had collected 67% of all signatures submitted in support of 19OGTX. [Exc. 224] This motion was ripe but the superior court never ruled on it. [Exc. 224, 225 and 226] Resource Development Council's motion to unseal these materials that should be publicly viewable under Administrative Rule 37.5 was also ripe but also not ruled on. [R. 32-38]

On July 7, the superior court held oral argument on the pending dispositive motions. [R. 183]

On July 16, the superior court issued its Order Regarding Motions to Dismiss and Motions for Summary Judgment ("Superior Court's Order"). [Exc. 227-256] The superior court ruled that Resource Development Council was correct that AS 15.45.110(c) prohibited circulators from receiving payment in excess of $1 per-signature collected,

14 *Id*.

15 *Id*.

regardless of how the ballot group structured circulator payment (*i.e.*, hourly, salary, or per-signature basis of compensation). [Exc. 227-228; 234-237] However, the superior court went on to rule that AS 15.45.110(c) violated the First Amendment by unduly restricting Fair Share's ability to pay and utilize signature gatherers to get 19OGTX on the ballot. [Exc. 238-246] Therefore, the superior court ruled that AS 15.45.110(c)'s payment restriction was "invalid." [Exc. 227-228]

The court also held that AS 15.45.130 required the lieutenant governor to count subscriptions even if supported by false certifications. [Exc. 246-251] If AS 15.45.130 authorized the lieutenant governor to invalidate subscriptions supported by a false circulator affidavit, the superior court reasoned, it was an unconstitutional infringement on the free speech rights of those Alaskans that signed the 19OGTX initiative. [Exc. 251-255] On July 17, 2020, the superior court issued its Final Judgment. [Exc. 257] On July 20, Resource Development Council filed this appeal.

V. STANDARD OF REVIEW

De novo review applies to all aspects of this appeal. This Court reviews a superior court's order granting a motion to dismiss *de novo*.[16] This Court reviews issues of constitutional interpretation *de novo*, applying its independent judgment.[17] And it reviews the superior court's statutory interpretations of AS 15.45.110(c) and AS 15.45.130 *de novo*.[18]

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16 *Adkins v. Stansel*, 204 P.3d 1031, 1033 (Alaska 2009).

17 *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.2d 380, 385-86 (Alaska 2013).

18 *Alaska Pub Def. Agency v. Superior Court*, 450 P.3d 246, 251-52 (Alaska 2019).

VI. ARGUMENT

A. Relevant Legal Authority

Alaska's Constitution provides that the "people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum."[19] The process begins when an initiative is proposed by an application containing the specific bill to be initiated.[20] The lieutenant governor has 60 days to determine whether the proposed initiative violates any of the subject-matter or one-subject restrictions for initiatives, and to deny or certify the application.[21] This Court has decided many appeals regarding the lieutenant governor's decision to certify or reject an initiative application as violating the Alaska Constitution's one-subject rule and subject-matter restrictions for initiatives.[22] This is not one of those appeals, as the substance of 19OGTX is not at issue.

It is the next step—circulation of petitions—that is at issue in this appeal. If the lieutenant governor certifies the application, the next step is circulation of the petitions. After certifying the initiative application, the lieutenant governor prepares a "sufficient number of sequentially numbered petitions to allow full circulation throughout the state."[23] To circulate petition booklets, a circulator must be: (1) a citizen of the United States; (2)

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19 Alaska Const. art. XI, § 1.

20 Alaska Const. art. XI, § 2; *see also* AS 15.45.030

21 Alaska Const. art. XI, § 2; *see also* AS 15.45.070 and .080.

22 *See e.g. Meyer v. Alaskans for Better Elections*, ___ P.3d ___, ___ 2020 WL 3117316 (June 12, 2020); *Mallott v. Stand for Salmon*, 431 P.3d 159 (Alaska 2018).

23 AS 15.45.090; Alaska Const. art. XI, § 3.

18 year of age or older; and (3) a resident of Alaska.[24] Each petition booklet can be circulated only be a single individual.[25] AS 15.45.110 prohibits a circulator from being paid more than $1 a signature for the collection of signatures and inducing another to sign a petition booklet, and makes it a class B misdemeanor crime to violate these restrictions:

> c) A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.
> d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.
> e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.[26]

The Division of Elections' regulation at 6 AAC 25.240 specifies, among other things: how many petition booklets the Division must print for circulators,[27] the information each subscriber to a petition must include,[28] that all petition booklets containing subscriptions must be filed together,[29] that signatures contained in a petition booklet may not be counted if "the person who circulated the petition did not complete the certification affidavit,"[30] and grounds for invalidating individual signatures within a petition booklet.[31]

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24 AS 15.45.105.

25 AS 15.45.110(a).

26 AS 15.45.110(c)-(e).

27 6 AAC 25.240(a).

28 6 AAC 25.240(b).

29 6 AAC 25.240(c).

30 6 AAC 25.240(g).

31 6 AAC 25.240(h).

Once the ballot group supporting the initiative gathers all of the necessary signatures, the group submits its petition to the lieutenant governor, who is tasked with determining whether sufficient qualifying subscriptions were gathered to gain ballot access.[32] A petition circulator is required to submit with each petition booklet a certification stating compliance with several petition-circulation rules.[33] "In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."[34]

All parties and the superior court heavily cited this Court's decision in *North West Cruiseship Association of Alaska, Inc. v. State*[35] in the proceedings below. *North West Cruiseship* involved challenges to subscriber signatures on a petition on four grounds. *First*, AS 15.45.120 requires each subscriber to be a registered Alaska voter *at the time they sign the petition*, but the petition booklets printed by the Division of Elections lacked a spot for subscribers to date their signatures. During its review of the petitions, the Division only counted signatures of individuals who were registered as of the date the petition booklet was filed. Cruiseship groups challenged all of the subscriptions, arguing the Division had no way of verifying that any subscriber was a registered voter at the time he or she signed the petition.[36] The Court reasoned that while the Division's method of

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32 Alaska Const. art. XI, § 3; AS 15.45.130.

33 AS 15.45.130.

34 *Id*.

35 *North West Cruiseship Association, Inc. v. State*, 145 P.3d 573 (Alaska 2006).

36 *Id*. at 576-77.

auditing the signatures "may have been somewhat imprecise, in that a subscriber's voting registration status could only be verified as of the date the petitions were filed, the audit was nevertheless reasonable given that there was no statutory requirement that each signature be dated at the time of the audit."[37] Importantly, the Court made clear that its "analysis would be different had the legislature affirmatively required the signatures to be individually dated."[38]

Second, the circulator affidavits were self-certified by the circulators instead of by notary publics, and did not include the location of self-certification and included petitions that were circulated in Anchorage where public notaries were typically available.[39] The Court reasoned that nothing prohibited a circulator from self-certifying his or her own circulator affidavit in Anchorage or anywhere else in the state, and the failure to include the location of the self-certification was a technicality that did not affect the sworn nature of the affidavit: "Because the failure to provide a place of execution is a technical deficiency that does not impede the purpose of the certification requirement, we conclude the petition booklets should not be rejected on these grounds."[40]

Third, the cruiseship plaintiffs challenged the Division's failure to reject the subscriptions contained in petition booklets that did not include on each page the "paid by" information required statute.[41] Circulators submitted 254 petition booklets containing

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37 *Id*.

38 *Id.* at 577.

39 *Id*. at 578.

40 *Id*. at 577-78.

41 *Id*. at 578.

subscriptions.[42] Two of those petition booklets each had one page that did not include the "paid by" information, and all other pages in these two petition booklets contained the proper disclosure.[43] The Division rejected all signatures contained on the two pages that did not include the "paid by" disclosure, but the plaintiffs sought to invalidate those two booklets in their entirety.[44] The Court approved of the Division's method, stating that by only excluding the otherwise valid signatures on pages that lacked the disclosure, the Division "struck a careful balance between the people's right to enact legislation by initiative and the regulations requiring that potential petition subscribers be made aware that the circulators may have a motivation to induce them to sign the petition other than a personal belief in the value of the initiative."[45] It is in this context of affirming the Division's rejection of otherwise valid subscriptions on pages of the petition that lacked the required disclosure but counting the subscriptions on the other pages of the petition booklets that included the "paid by" disclosure that the Court quoted its prior directive to the Division to interpret its regulations in a way that "avoids the wholesale disenfranchisement of qualified electors."[46]

Finally, the Court upheld the Division's counting of subscriptions that lacked the subscriber's physical residence address, as required by a Division regulation and not required by statute. The Court reasoned that while these subscribers failed to include their

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42 *Id*. at 576.

43 *Id*. at 578.

44 *Id*.

45 *Id*.

46 *Id*.

physical address, they all included their mailing address, their voter registration number, or social security number, and this information was sufficient for the Division to confirm they were qualified voters.[47]

B. The Superior Court Erred in Ruling AS 15.45.110(c) Unconstitutional Under the First Amendment

The Superior Court erroneously ruled that AS 15.45.110(c) is unconstitutional without the benefit of any factual evidence. Specifically, the superior court concluded that AS 15.45.110(c)'s cap on circulator payment was unconstitutional under any circumstance because it "poses a substantial burden on the free speech rights of petition sponsors" by restricting how much they can pay ballot circulators.[48] The court reasoned that limiting circulator payment to $1 per signature meant that "circulators may be forced to effectively be volunteers."[49]

The court ruled AS 15.45.110(c) is facially unconstitutional under the First Amendment because of the impact its payment cap has on the circulation of petitions, but did so without the benefit of any factual record about the cap's *impact* on the circulation of petitions. This ruling was reversible error for two reasons: (1) the law strongly disfavors facial invalidation of statutes, and (2) U.S. Supreme Court precedent requires a party challenging the constitutionality of a state statute governing petition circulation to make a factual showing the rule places an undue burden on petition circulation. Fair Share failed

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47 *Id*.

48 Exc. 245.

49 *Id*.

to meet its burden of providing evidence that Alaska's statutory cap on the payment of circulators created a burden on petition circulation in Alaska.

1. The superior court's ruling that AS 15.45.110(c) is facially unconstitutional is erroneous because it is based on a nonexistent factual record, improperly forecloses its application in all future cases, and prevents the will of Alaskans from being implemented.

"A statute may be unconstitutional either on its face or as applied."[50] A statute is "facially unconstitutional if 'no set of circumstances exists under which the [statute] would be valid.'"[51] A statute is "facially unconstitutional where it is incapable of being constitutionally applied, or where it is overboard and infringes on values protected by the First Amendment."[52]

The U.S. Supreme Court has explained in an opinion reversing the Ninth Circuit's decision that a Washington state initiative implementing a blanket primary system was facially unconstitutional for "several reasons" that "[f]acial challenges are disfavored":

> Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of premature interpretation of statutes on the basis of factually barebones records. Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We

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50 *Javed v. Dept. of Public Safety*, 921 P.2d 620, 625 (Alaska 1996) (citing *Gilmore v. Alaska Workers' Compensation Bd.*, 882 P.2d 922, 929 n.17 (Alaska 1994)).

51 *Javed*, 921 P.2d at 625 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

52 *Gilmore*, 882 P2d at n.17 (citing *Salerno*, 481 U.S. at 745 and *Marks v. City of Anchorage*, 500 P.2d 644, 656 n.7 (Alaska 1972)).

> must keep in mind that a ruling of unconstitutionality frustrates the intent of the elected representatives of the people.[53]

All of these concerns apply to the superior court's ruling.

The factual record upon which the superior court based its ruling is less than "barebones," it is non-existent. The superior court ruled that AS 15.45.110(c) was facially "invalid" because it unduly burdened a ballot group's ability to circulate petitions in Alaska. But it did so without any evidence whatsoever. Instead, the superior court analogized to decisions by the U.S. Court of Appeals for the Second, Eighth and Ninth Circuit **upholding** other state statutes that limit circulator payment.[54] **None** of the circuit decisions discussed by the superior court invalidated prohibitions on circulator payment. All of them upheld the state statutes restricting circulator payment.[55] The only decision cited by the superior court that invalidated a prohibition on circulator payment is the U.S. Supreme Court's decision in *Meyer v. Grant*,[56] but that case involved an outright prohibition on any circulator payment and the statute was only invalidated after the trial court held a "brief trial" and took evidence on the burden of Colorado's statute.[57] Here,

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53 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (original citations, brackets and quotation marks omitted).

54 *See* Exc. 240-244.

55 *Prete v. Bradley*, 438 F.3d 949 (9th Cir. 2006) (upholding Oregon's statute prohibiting the payment of circulators on a per-signature basis); *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001) (upholding North Dakota's statute requiring circulators to be North Dakota residents and its prohibition on paying circulators on a per-signature basis); *Person v. New York State Board of Elections*, 467 F.3d 141 (2d Cir. 2006) (upholding New York's statute that prohibits the payment of circulators on a per-signature basis).

56 *Meyer v. Grant*, 486 U.S. 414 (1988).

57 *Id*. at 417-18 & n.6.

the superior court invalidated AS 15.45.110(c) as an "unconstitutional restriction on free speech" without any evidence whatsoever of how AS 15.45.110(c) affects signature gathering efforts in Alaska, if at all.

The court even opined that Alaska's "geographic differences" illustrated that AS 15.45.110(c) was an undue burden on collecting signatures because some house districts are not connected to the road system.[58] Again, there was no evidence in the record that signature gathering efforts would be unduly hampered in Alaska by restricting circulator payment to $1 per signature. There certainly was no evidence regarding the burden of AS 15.45.110(c)'s effect on off-the-road-system signature gathering efforts in Alaska. Many of the trial court's speculative factual conclusions cannot pass even minor scrutiny.

For example, the trial court assumed that in order to meet the requirement to collect signatures from rural house districts, a signature gatherer would have to purchase an expensive plane ticket to fly to remote communities and that such a purchase would be precluded by the plain language of AS 15.45.110(c).[59] This conclusion is wrong for at least three reasons. First, Alaskans routinely travel to purchase supplies, visit relatives, conduct business, and obtain medical care. A signature gatherer at any of Alaska's hub airports can collect signatures from far-flung house districts. The same is true at any Costco

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[58] Exc. 243.

[59] [Exc. 245] "In fact, if a circulator traveled by plane to a village to collect signatures, it is doubtful that payment of $1 per signature would be sufficient compensation—such circulator would truly be a volunteer regardless." *Id*.

store, at regional and statewide hospitals, and at the many statewide conventions and conferences, like the annual Alaska Federation of Natives conference, that bring together Alaskans from across the state.

Second, sponsors need not purchase plane tickets to collect signatures in the Bush. Rather, with sufficient democratic support for an initiative, the only cost of obtaining signatures need be two stamps: one to mail the petition to a supporter in the Bush willing to collect signatures from her neighbors, and a second stamp to return the petition after signed. Third, AS 15.45.110(c) solely caps compensation and is silent as to reimbursement of travel expenses. The superior court assumed that travel would have to be paid by signature gatherers, but employers are permitted to reimburse expenses incurred on the employer's behalf and the law uniformly directs that reimbursement of expenses "is not compensation for services rendered by the employees…"[60]

Also implicit in the superior court's decision is the assumption that ballot initiatives require paid signature gathering. But, recent signature gathering efforts show this assumption to be false. Recently, proponents of an effort to recall Governor Dunleavy collected nearly 50,000 signatures in support of that effort, and did so in five weeks utilizing only volunteer petition circulators.[61]

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[60] 29 C.F.R. § 778.217.

[61] *See* Alex DeMarban and James Brooks, *Recall Dunleavy Campaign Turns in 49,000 Signatures Collected in 5 Weeks*, ANCHORAGE DAILY NEWS, Sept. 5, 2019 (available at: https://www.adn.com/politics/2019/09/05/recall-dunleavy-campaign-turns-in-48000-signatures-collected-in-five-weeks/). Recall Dunleavy's campaign finance disclosure forms for the time period when these signatures were gathered shows no income and no expenditures. *See* Third Quarterly Report for 2019-Recall Dunleavy ballot group (Oct. 8,

The superior court's decision, ruling AS 15.45.110(c) unconstitutional without the benefit of any factual record of its impact on signature gathering in Alaska, impermissibly "rest[s] on speculation."[62] When the trial court's speculation is put to the test, it does not withstand any scrutiny whatsoever. This is what happens when judges decide fact-sensitive issues without any facts.

The superior court's ruling that AS 15.45.110(c) is facially invalid also undercuts the other judicial values that the U.S. Supreme Court provided as reasons facial challenges are "disfavored."[63] The superior court ruled AS 15.45.110(c) unconstitutional *in toto* "in advance of the necessity of deciding" whether AS 15.45.110(c)'s prohibition could be constitutional in any context.[64] This Court has adopted the U.S. Supreme Court's formulation that ruling a statute "facially invalid" means "no set of circumstances exists under which the [statute] would be valid."[65] The superior court's ruling means that the State may not validly enforce AS 15.45.110(c) under any set of circumstances. In other words, Alaska no longer has any limit on the payment of circulators, and ballot groups may pay circulators any amount to gather signatures in support of a ballot initiative.

2019) (available at: https://aws.state.ak.us/ApocReports/Common/View.aspx?ID=28314&ViewType=CD).

62 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008).

63 *Id*.

64 *Id*.

65 *State, Dept. of Revenue v. Beans*, 965 P.2d 725, 728 (Alaska 1998); *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922, 929 n.17 (Alaska 1994); *Javed v. Dept. of Public Safety*, 921 P.2d 620, 625 (Alaska 1996); *see also United States v. Salerno*, 481 U.S. 739, 745 (1987).

Finally, the superior court' ruling "frustrates the intent of the elected representatives of the people."[66] As the superior court correctly concluded, the Alaska Legislature purposefully enacted AS 15.45.110(c) to keep as much money out of the initiative process as possible.[67] Alaska's elected representatives, acting on behalf of their constituencies, purposefully passed AS 15.45.110(c) to "bring the [signature-gathering] process back to a more grass roots effort."[68] Alaskans were frustrated enough with money purchasing ballot access that their elected representatives passed a hard limit on how much ballot groups could pay circulators. And, as this case highlights, for good reason. The ballot group for the 19OGTX initiative outsourced most of its signature gathering effort.[69] Rather than engage Alaskans and gather their grass roots support, Fair Share simply paid professional petition companies in Texas and Nevada to hire nonresident circulators to fly to Alaska and to collect pay in excess of AS 15.45.110(c) to gather the necessary signatures for 19OGTX to be on this year's general election ballot. Instead of an exercise in democracy by concerned citizens, the initiative process without regulation becomes a tool for the rich and special interests to purchase ballot access at their convenience.

This Court should reverse the superior court's ruling that AS 15.45.110(c) is unconstitutional because that ruling is based on speculation about the impact of the statute,

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66 *Washington State Grange*, 552 U.S. at 450.

67 Exc. 238.

68 Exc. 237.

69 Exc. 224; Plaintiffs' Memorandum in Support of Motion for Summary Judgment at 3-4 (July 6, 2020) (documenting how much Fair Share paid TPS and AMT for signature gathering).

unnecessarily invalidates the payment cap on signature gathering under all sets of circumstances, and frustrates the intent of the will of the people as manifested in the Legislature's passage of the payment cap.

2. The superior court's ruling that AS 15.45.110(c) is facially invalid ignores precedent of the U.S. Supreme Court that requires the challenger of a state petition-circulation statute to affirmatively put forward factual evidence of its undue burden on petition circulation.

There is another reason none of the cases cited by the superior court invalidated a state statute regulating petition circulation: it is contrary to U.S. Supreme Court precedent. In *Meyer v. Grant,*[70] the Court struck down Colorado's outright prohibition on paying circulators *only after* the trial court held a brief trial in which the challengers of the Colorado statute demonstrated the burden it placed on petition circulation in Colorado.[71] In *Buckley v. American Constitutional Law Foundation, Inc.*,[72] the Court again was tasked with determining the constitutionality of Colorado's initiative statutes, and ultimately struck down and upheld various petition-circulation rules based on the evidence presented at the bench trial.[73] The Ninth Circuit has correctly interpreted these two decisions as requiring the party challenging the constitutionality of the state circulator statute to introduce evidence of the burden it places on petition circulation:

> To the extent *Meyer* may be read to indicate that any resulting decrease in the pool of available circulators is sufficient to constitute a "severe burden"

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70 *Meyer v. Grant*, 486 U.S. 414 (1988).

71 *Id*. at 418, 422-23 n.6 (discussing the evidence of burden presented by the challengers to the Colorado statute).

72 *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

73 *Id*. at 190.

> under the First Amendment, in *Buckley* the Court refined its analysis and made clear that the *degree* of the decrease resulting from the measure is properly considered in determining the severity of the burden.[74]

In *Prete v. Bradbury*, the Ninth Circuit spent pages analyzing the evidence presented by challengers to Oregon's statute governing the payment of petition circulators *before* turning to the state's interests in regulating the circulation process.[75] Ultimately, the Ninth Circuit upheld Oregon's statute that prohibited the payment of circulators on a per-signature basis because the court concluded that it did not "severely burden their First Amendment rights in circulating initiative petitions" and served important regulatory interests.[76]

The superior court erroneously placed the initial burden on the State to prove the constitutionality of AS 15.45.110(c).[77] This was error. Under *Meyer*, *Buckley*, and *Prete*, Fair Share, as the party asserting that AS 15.45.110(c) imposes a severe burden on their ability to circulate petitions, had the burden to introduce evidence of that burden. The superior court erred by invalidating AS 15.45.110(c) without any evidence the burden it places on petition circulation in the record.

C. The Superior Court Erred in Ruling that AS 15.45.130 Permits the State of Alaska to Count Subscriptions Certified by a Circulator's Certification Affidavit that Falsely States Compliance with AS 15.45.110(c)'s Circulator Payment Cap

The superior court erroneously interpreted AS 15.45.130 to mean that a circulator

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74 *Prete v. Bradbury*, 438 F.3d 949, 962-63 (9th Cir. 2006) (emphasis in original).

75 *Id*. at 963-69.

76 *Id*. at 971.

77 *See* Exc. 244 ("No evidence or argument has been presented demonstrating how the $1 per signature limit is narrowly tailored to fit any of the State's interests.").

properly certifies a petition so long as the circulator *completes* the certifications. The certifications could all be false, according to the superior court's interpretation, and the petition would be "properly certified." This confusing ruling is important because AS 15.45.130 provides that "the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."[78] A proper statutory analysis shows that a circulator's false statements on the Certification Affidavit means a petition has not been "properly certified," rendering the lieutenant governor unable to count subscriptions contained in that petition.

This Court has repeatedly confirmed that in determining the meaning of "statutory language we begin with the plain meaning of the statutory text."[79]

AS 15.45.130 provides in full:

> Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted. The affidavit must state in substance
>
> 1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;
>
> 2) that the person is the only circulator of that petition;
>
> 3) that the signatures were made in the circulator's actual presence;
>
> 4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

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78 AS 15.45.130.

79 *Hendricks-Pearce v. State, Dept. of Corrections*, 323 P.3d 30, 35 (Alaska 2014); *Ward v. State, Dep't of Pub. Safety*, 288 P.3d 94, 98 (Alaska 2012).

5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

AS 15.45.130 can be broken down into three components. *First*, it explains that a circulator must certify by affidavit each petition containing signatures it submits to the lieutenant governor. *Second*, it explains what it means for a circulator to "certify" a petition: the circulator swears to meeting or fulfilling subsections (1) through (8). *Third*, it explains when a petition is not "properly certified," the lieutenant governor may not count subscriptions contained in petition. Only the second and third components of AS 15.45.130 are at issue in this appeal, regarding what constitutes "certification" and when a petition is "not properly certified."

AS 15.45.130 explains that to certify a petition, the circulator must swear to meeting or complying with the requirements of AS 15.45.130(1) through (8). This requires the circulator to swear, among other things, that the circulator did not allow others to circulate the petition,[80] that he or she is an Alaskan resident,[81] and that he or she has not agreed to

[80] AS 15.45.130(2).

[81] AS 15.45.130(1).

be paid in excess of AS 15.45.110(c)'s cap on circulator payment.[82] Importantly, AS 15.45.130(6)—the certification at issue in this appeal—requires certification "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c)[.]" Unlike subsections (4) and (5), which merely ask a circulator to certify "to the best of their knowledge" compliance, AS 15.45.130(6) simply requires a circulator to certify compliance with the payment cap. The certification is either accurate or not; the circulator's state of mind is not relevant to AS 15.45.130(6).

Here, in granting the motion to dismiss, the superior court was required to "presume all factual allegations of the complaint to be true and make all reasonable inferences in favor of the non-moving party."[83] The Complaint in this case alleges that the professional circulators hired by Advanced Micro Targeting, Inc. to travel to Alaska and gather the signatures required for the 19OGTX initiative to be placed on the upcoming general election ballot were paid in excess of AS 15.45.110(c)'s payment cap.[84] Moreover, in a motion for summary judgment, Resource Development Council presented undisputed evidence from AMT and the Division of Elections that AMT-paid circulators received payment in excess of $1 for every signature they collected.[85] And Resource Development

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82 AS 15.45.130(6).

83 *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1217 (Alaska 2009).

84 Exc. 004-006.

85 Exc. 224. *See* Plaintiffs' Memorandum in Support of Motion for Summary Judgement at 8-9 and Exhibit E (July 6, 2020). The superior court granted the State Defendants' and Defendant Vote Yes For Alaska's Fair Share's motions to dismiss, without ruling on Plaintiffs' Motion for Summary Judgment.

Council presented undisputed evidence that every AMT-paid circulator certified compliance with AS 15.45.110(c)'s payment cap despite their actual pay.[86]

The superior court's interpretation deletes the word "properly" from the statutory phrase "properly certified." The superior court concluded that so long as the circulator states compliance with subsections (1) through (8) of AS 15.45.130, the petition is "properly certified." According to the superior court, the veracity of the certifications has no bearing on whether it is "properly certified." In other words, a petition is properly certified, according to the superior court's ruling, if the circulator *falsely* swears compliance with any or all of these requirements:

> (1) that the [circulator] meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;
>
> (2) that the person is the only circulator of that petition;
>
> (3) that the signatures were made in the circulator's actual presence;
>
> (4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;
>
> (5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;
>
> (6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);
>
> (7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and
>
> (8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.[87]

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[86] Exc. 224. *See* Plaintiffs' Memorandum in Support of Motion for Summary Judgement at 6 and Exhibit A (July 6, 2020).

[87] AS 15.45.130.

But the superior court's reading is erroneous. If the Alaska Legislature had simply been concerned about a circulator *completing* all the certifications regardless of their veracity, it could have simply stated "the lieutenant governor may not count subscriptions on petitions not certified" instead of stating "the lieutenant governor may not count subscriptions on petitions not *properly* certified." The superior court's reading makes the term "properly" superfluous. This was error under this Court's precedents governing statutory construction.

This Court has repeatedly made clear that courts should not read statutes to render individual words or portions meaningless. When interpreting statutes, this Court presumes the Legislature "intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous."[88]

The superior court correctly noted that "properly" is not defined by statute. But, instead of turning to the plain meaning of the word, the superior court distilled the meaning of "properly certified" by borrowing from a case that did not interpret "properly" and did not analyze AS 15.45.130 at all,[89] and by opining that it would be unduly harsh to invalidate signatures supported by a circulator affidavit that contained a false statement regarding

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[88] *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013); *see also State, Dept. of Commerce v. Progressive Casualty Ins. Co.*, 165 P.3d 624, 629 (Alaska 2007); *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1999); *Rydwell v. Anchorage School Dist.*, 864 P.2d 526, 530-31 (Alaska 1993); *Alaska Transp. Commission v. AIRPAC, Inc.*, 685 P.2d 1248, 1253 (Alaska 1984); *City of Homer v. Gangl*, 650 P.2d 396, 399 (Alaska 1982); *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626, 634 (Alaska 1979).

[89] Exc. 251 (quoting *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977)).

compliance with the payment cap.[90] In the superior court's view, the signatures contained in petition booklets that were falsely certified should be counted by the lieutenant governor because "Alaskan voters should not be disenfranchised on the basis of 'technical errors.'"[91] This analysis was error, because the "goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[92] The goal is not for the superior court to promulgate a definition with which it is most comfortable. The Legislature's intent governs statutory construction.

The superior court should have turned to the common usage and common understanding of the term "properly." This Court has explained that in the "absence of a [statutory] definition, we construe statutory terms according to their common meaning."[93] "Dictionaries 'provide a useful starting point for determining' a phrase's common meaning."[94]

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90 *Id*.

91 Exc. 250.

92 *City of Valdez v. State*, 372 P.3d 240, 254 (Alaska 2016); *see also City of Fairbanks v. Amoco Chem. Co.*, 952 P.2d 1173, 1178 (Alaska 1998) (quoting *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 905 (Alaska 1987)).

93 *Alaska Association of Naturopathic Physicians v. State Department of Commerce*, 414 P.3d 630, 635 (Alaska 2018); *see also Adamson v. Municipality of Anchorage*, 333 P.3d 5, 16 (Alaska 2014).

94 *Alaska Association of Naturopathic Physicians*, 414 P.3d at 635 (quoting *Alaskans for Efficient Gov't, Inc. v. Knowles*, 91 P.3d 273, 276 n.4 (Alaska 2004)).

"Properly" means "in an acceptable or suitable way," "in an accurate or correct way,"[95] or "[a]ppropriate, suitable, right, fit, or correct; according to the rules."[96] The U.S. Supreme Court turned to this "common usage" and "common understanding" of the term, when it was tasked with interpreting the statutory phrase "properly filed" in the federal habeas statute.[97] The U.S. Supreme Court held that a habeas petition is "properly" filed, as opposed to simply filed, when the filing was done in "compliance with the applicable laws and rules governing filings."[98] The Supreme Court of Texas likewise turned to the "common meaning" of properly to interpret the statutory phrase "properly executed" contract.[99] The Court reasoned:

> The adjective "properly" necessarily limits the verb "executed," leading to the inexorable conclusion that not *all* executed contracts qualify for [waiver a charter school's governmental immunity from breach of contract claims]. In this context, a contract is *properly* executed when it is executed in accord with the statutes and regulations prescribing that authority. "Proper" means "appropriate, suitable, right, fit, or correct; *according to the rules*." Open-

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95 "Properly," *Merriam-Webster.com Dictionary*, (Accessed July 24, 2020) (available online at: https://www.merriam-webster.com/dictionary/properly); *see also* "Properly," *Webster's International Dictionary*, at 1983 (2d ed. 1947) ("**1.** Suitably; fitly; strictly; rightly; correctly; as a word *properly* applied; a dress *properly* hung"); "Proper," *Black's Law Dictionary* (11th ed. 2019) (proper *adj*. **1.** Belonging to the natural or essential constitution of; peculiar, distinctive <proper Bavarian traditions>. **2.** Of, relating to, or involving the exact or particular part strictly so called <Dallas proper>. **3.** Appropriate, suitable, right, fit, or correct; according to the rule <a proper request>. **4.** Strictly pertinent or applicable; exact; correct <proper words in proper places>. **5.** Conforming to the best ethical or social usage; allowable, right, and becoming <using only proper means>. **6.** Thoroughly polite; mindful of what is socially correct <he is very formal and proper>.) *Id*.

96 *Proper*, BLACK'S LAW DICTIONARY (11th ed. 2019).

97 *Pace v. DiGuglielmo*, 544 U.S. 408, 413 (2005); *Artuz v. Bennett*, 531 U.S. 4, 8 (2000).

98 *Artuz*, 531 U.S. at 8.

99 *El Paso Education Initiative v. Amex Properties, LLC*, ___ S.W.3d ____, ____, 2020 WL 2601641, *7 (Texas May 22, 2020).

> enrollment charter schools operate pursuant to statute. Accordingly, they may enter into a contract only in the manner the legislature has authorized.[100]

Here, the superior court equated "properly certified" to mean "certified." The superior court did not look to what the term properly commonly means and how it is commonly used. It did so by focusing on the court's constitutional concerns with invalidating signatures instead of looking to what the statutory words passed by the Alaska Legislature mean.[101]

A circulator's certification is "proper" if the certification is done in an "accurate or correct way" and "according to the rules."[102] In AS 15.45.130, a proper certification is one that is accurate and completed "according to the rules." A certification is not proper—it is inaccurate and not completed in accordance with the rules—if the circulator falsely certifies compliance with Alaska petition-circulation statutes. Under AS 15.45.130, a petition is not "properly certified" if the circulator provides false statements of compliance with AS 15.45.130(1)-(8).

Another aspect of the superior court's reasoning warrants brief refutation because it adopted an illogical argument urged by the State and Fair Share below. The superior court reasoned that false circulator statements did not warrant invalidation of signatures

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100 *Id*. (original brackets and citations omitted; emphasis in original) (quoting BLACK'S LAW DICTIONARY).

101 Exc. 251 ("Beyond 'integrity of the process,' Plaintiffs offer little justification to interpret AS 15.45.130 to disenfranchise Alaska voters over a technical defect, especially when the statute has prescribed criminal penalties for circulators who fail to follow the law.").

102 *See supra* n. 95 (footnote surveying dictionary definitions of "properly").

contained in the petition because there is a criminal penalty for falsely certifying compliance.[103] This is not true.

AS 15.45.110(e) provides a penalty for the *conduct* of being paid in excess of the statutory cap, and does not provide any penalty for falsely *certifying* compliance with the cap. AS 15.45.110(e)'s criminal penalty has nothing to do with and does not apply to a circulator's certifications under AS 15.45.130. Those criminal penalties apply to a circulator's actual pay for collecting signatures and inducing residents to sign a petition. Those penalties do not apply to a circulator's false statement on a certification.

The superior court's reasoning is further undercut by the court's mistaken belief that AS 15.45.110(e)'s criminal penalty applies to subjects other than a circulator's payment and the improper inducement of residents to sign a petition. By its terms, AS 15.45.110(e) applies only to those two subjects. AS 15.45.110, provides in relevant part:

> c) A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.
>
> d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.
>
> e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

AS 15.45.110 does not even address the *subjects* of the certifications required by AS 15.45.130(1)-(5) and (8). Those certifications require statements: (1) that the person

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[103] Exc. 248 ("A circulator making a false certification is subject to perjury charges and the class B misdemeanor provision under AS 15.45.110(c).").

signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105; (2) that the person is the only circulator of that petition; (3) that the signatures were made in the circulator's actual presence; (4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be; (5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of the signature; and (8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition. The superior court's reasoning that AS 15.45.110(e) provides a remedy for false circulator certifications overlooks that that statute has nothing to do with certifications and does not even deal with the *subjects* contained in AS 15.45.130(1)-(5) and (8). The only remedy the legislature contemplated for false certifications is the one contained in AS 15.45.130: if a certification is not done in accordance with the rules (i.e., not "properly certified), then the lieutenant governor may not count those subscriptions.

The Alaska Legislature included the proper and sole remedy right in the statute. AS 15.45.130 provides, in relevant part: "In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified[.]"[104] The unambiguous remedy of AS 15.45.130 is for the lieutenant governor not to count the

[104] AS 15.45.130.

subscriptions in a petition booklet, if the certifications were not proper. This Court should uphold the explicit remedy contained in AS 15.45.130.

Alaska is not alone in requiring circulators to comply with circulation statutes or the signatures they have gathered are invalid. Other state supreme courts have ruled that their respective statutory schemes regarding petition circulation have warranted invalidation of all signatures contained in petition booklets circulated by an individual who did not follow the state's initiative laws. Specifically, the supreme courts of Montana,[105] Oklahoma,[106] Arizona,[107] Ohio,[108] Maine,[109] and Arkansas[110] have done so. The Maine Supreme Court explained the necessity of demanding circulators strictly comply with circulation rules in the context of invalidating otherwise valid signatures in a petition booklet because the circulator did not sign the circulator affidavit in the presence of a notary public:

> [I]t is evident that the circulator's role in a citizens' initiative is pivotal. Indeed, the integrity of the initiative and referendum process in many ways hinges on the trustworthiness and veracity of the circulator. . . . Thus, the circulator's oath is critical to the validation of a petition.[111]

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105 *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759, 777 (Mont. 2006) (invalidating 64,463 petition signatures).

106 *In re Initiative Petition No. 379, State Question No. 726*, 155 P.3d 32, 46 (Okla. 2006) (invalidating more than 57,000 petition signatures).

107 *Brousseau v. Fitzgerald*, 675 P.2d 713, 715 (Ariz. 1984) (invalidating hundreds of petition signatures).

108 *State ex rel. Schmelzer v. Board of Elections of Cuyahoga County*, 440 N.E.2d 801, 803-04 (Ohio 1982) (invalidating 50 petition signatures).

109 *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 82 (Me. 2002) (invalidating 14,506 petition signatures).

110 *Benca v. Martin*, 500 S.W.3d 742, 748-51 (Ark. 2016) (invalidating 12,104 petition signatures).

111 *Maine Taxpayers Action Network*, 795 A.2d at 80 (internal citations omitted).

This reasoning applies with equal force in Alaska, where the circulator's role in the initiative process is pivotal. AS 15.45.130 wisely demands that circulators submit proper certifications with accurate statements of compliance with petition-circulation rules or the signatures they gathered are invalid.

Resource Development Council respectfully requests this Court reverse the superior court's holding that ignores "properly" in the statutory phrase "properly certified" in AS 15.45.130. That holding would vindicate the intent of the Legislature, which should be this Court's objective when interpreting a statute. Resource Development Council further respectfully requests the Court rule that the proper remedy for an improperly certified petition is that the lieutenant governor may not count the subscriptions contained in the petition improperly certified. That holding would vindicate the Legislature's explicit intent contained in AS 15.45.130 that "the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."

D. The Superior Court Erred in Ruling that if AS 15.45.130 Requires the State to Disqualify Subscriptions Supported by a False Certification, AS 15.45.130 Is Unconstitutional Under the First Amendment

Recognizing that its reading of AS 15.45.130 might not withstand appellate scrutiny, the superior court issued an alternative holding striking the statute as unconstitutional.[112] The superior court equated the invalidation of subscriptions in a

[112] Exc. 251-252 ("Because the parties have clearly indicated an intention to seek immediate appellate review, this Court offers the following alternative holding on the certification statute, AS 15.45.130. … Even assuming Plaintiffs could achieve the remedy they seek in this case to prevent the Lieutenant Governor from counting the signatures in

petition to the "disenfranchisement" of voters.[113] It then slid to the conclusion, by pulling various policy statements from this Court's decisions, that "the stated remedy under AS 15.45.130 [invalidation of subscriptions] is an unconstitutional restriction on the free speech rights of the disenfranchised voters."[114] The superior court's novel ruling is foreclosed by federal law interpreting the rights to free speech and vote.

The superior court's primary error was to implicitly assume, without expressly deciding, that an individual who signs a ballot petition has a First Amendment right to **vote** on the issue for which they signed the petition.[115] There are no such First Amendment or free speech rights under the U.S. Constitution or Alaska Constitution. None of the federal cases cited by the superior court recognized such rights.[116] None of the Alaska Supreme

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the petition booklets at issue, this Court has grave concern for the rights of the innocent voters who would be disenfranchised by the wholesale disregard of many thousands of petition signatures simply because of a technical defect, or even misdeed by the petition circulators.").

113 Exc. 252.

114 Exc. 255.

115 Exc. 252 ("Even assuming Plaintiffs could achieve the remedy they seek in this case to prevent the Lieutenant Governor from counting the signatures in the petition booklets at issue, this Court has grave concern for the rights of the innocent voters who would be disenfranchised by the wholesale disregard of many thousands of petition signatures simply because of a technical defect, or even misdeed by the petition circulators.").

116 *See* Exc. 251-255 (*Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008) (recognizing the ballot group's free speech rights to promote the initiative); *Meyer v. Grant*, 486 U.S. 414, 421 (1988) (same); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 187-205 (1999) (same); *National Association for Gun Rights v. Mangan*, 933 F.3d 1102, 1122 (9th Cir. 2019) (upholding against a First Amendment challenge Montana's disclosure requirement for "electioneering communications," including issue advocacy communications); *John Doe 1 v. Reed*, 561 U.S. 186, (2010) (rejecting First Amendment challenge brought by petition sponsor and individual signers of referendum to Washington's disclosure (under the state's public records act) to private

Court cases cited by the superior court even involve First Amendment or free speech challenges.[117]

Federal courts that have looked at this issue have uniformly rejected the proposition that residents have a First Amendment or other constitutional right to vote on an initiative they signed. In *Taxpayers United for Assessment Cuts v. Austin*,[118] Michigan residents who signed an initiative petition sued Michigan authorities who had disqualified over 32,000 signatures collected in support of a property-tax reduction and adjudication initiative.[119] The residents who signed the petition alleged violation of their First Amendment rights.[120] The trial court granted the Michigan-official defendants' motion to dismiss, because the plaintiffs had no cognizable First Amendment right to vote on a

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individuals the signatories of a referendum to retract the extension of certain benefits to same-sex couples)).

117 Exc. 251-255 (*North West Cruiseship Association of Alaska, Inc. v. State*, 145 P.3d 573 (Alaska 2006) (review of Division of Elections qualification of initiative under Alaska's initiative statutes without any mention of First Amendment or free speech principles under the U.S. Constitution or Alaska Constitution); *Fischer v. Stout*, 741 P.2d 217 (Alaska 1987) (ruling that additional challenged ballots to be counted on election appeal under AS 15.20.510; no mention of First Amendment or free speech principles); *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974) (ruling that subject of initiative, moving the state capital out of Juneau, did not constitute impermissible "special or local legislation" under the Alaska Constitution; no mention of First Amendment or free speech principles); *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979) (upholding superior court's determination that initiative that proposed to make 30 million acres of state land available to Alaska residents constituted an impermissible "appropriation" under the Alaska Constitution; no mention of First Amendment or free speech principles)).

118 *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291 (6th Cir. 1993).

119 *Id*. at 293.

120 *Id*. at 293-94.

proposed initiative.[121] *First*, the court brushed aside the plaintiffs' contention that the signer of a petition who had his signature invalidated by the state has been disenfranchised from voting.[122] *Second*, the court rejected plaintiffs' contention that disqualifying subscriptions on a petition because of non-compliance with Michigan's initiative procedure constituted an abridgment of the signers' free speech rights:

> We also conclude that the plaintiffs' rights to free speech and political association have not been impinged. Because the right to initiate legislation is a wholly state-created right, we believe that the state may constitutionally place nondiscriminatory, content-neutral limitations on plaintiffs' ability to initiate legislation. . . . .
>
> The Michigan procedure does nothing more than impose nondiscriminatory, content-neutral restrictions on the plaintiffs' ability to use the initiative procedure that serve Michigan's interest in maintaining the integrity of its initiative process. Our result would be different if, as in *Meyer [v. Grant*, 486 U.S. 414 (1988)], the plaintiffs were challenging a restriction on their ability to communicate with other voters about proposed legislation, or if they alleged they were being treated differently than other groups seeking to initiate legislation. But, in the instant case, we believe that it is constitutionally permissible for Michigan to condition the use of its initiative procedure on compliance with content-neutral, nondiscriminatory regulations that are, as here, reasonably related to the purpose of administering an honest and fair initiative procedure. Accordingly, we conclude that the plaintiffs' First Amendment claim is without merit.[123]

The Sixth Circuit's rejection of First Amendment and disenfranchisement claims and its reasoning in *Taxpayers United* has been adopted by other courts.[124]

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121 *Id*. at 296-97.

122 *Id*. at 296.

123 *Id*. at 297.

124 *See e.g. Kendall v. Balcerzak*, 650 F.3d 515, 522 (4th Cir. 2011); *Niere v. St. Louis County*, 305 F.3d 834, 838 (8th Cir. 2002); *Salazar v. City of El Paso*, 2012 WL 5986674, *7 (W.D. Tex. Nov. 29, 2012).

In *Kendall v. Balcerzak*,[125] the Fourth Circuit adopted this reasoning and rejected a petition signer's First Amendment challenges to Maryland's refusal to certify a referendum petition he signed. The Fourth Circuit rejected the plaintiff's argument that he was being disenfranchised because signing a petition was not akin to voting: "This is not a right to vote case."[126] The *Kendall* court also adopted the Sixth Circuit's reasoning that invalidation of petition signatures was not subject to First Amendment scrutiny, unless the restriction causing the invalidation was content-based or discriminatory: "[W]hen analyzing state-created restrictions that are both content neutral and nondiscriminatory, the State's important regulatory interests are generally sufficient to justify the restrictions. We do not use a higher level of scrutiny as we do in some First Amendment cases."[127]

Here, as with the initiative regulations in *Taxpayers United* and *Kendall*, AS 15.45.130's invalidation of signatures supported by petitions that are not "properly certified" is a content-neutral, nondiscriminatory statutory restriction on the initiative procedure that serves Alaska's "interest in maintaining the integrity of its initiative process."[128] AS 15.45.130 is content neutral because it is does not make any distinctions based on the content of the initiative. It is nondiscriminatory because, by its plain terms, applies equally to all circulators of all petitions.

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125 *See Kendall*, 650 F.3d at 522.

126 *Id*. at 523.

127 *Id*. at 525.

128 *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir. 1993).

Subscribers to the 19OGTX initiative have no First Amendment or free speech right to vote on the 19OGTX initiative. It was error for the superior court to hold AS 15.45.130 unconstitutional under the First Amendment or free speech principles as it did below.

The reality that invalidation of subscriptions in a petition pursuant to content-neutral, nondiscriminatory state law does not disenfranchise any voter or abridge any constitutional right is confirmed by the decisions by the supreme courts of Montana,[129] Oklahoma,[130] Arizona,[131] Ohio,[132] Maine,[133] and Arkansas,[134] invalidating enough signatures to remove ballot initiatives from upcoming election ballots. None of these courts were concerned they were disenfranchising their state's voters by upholding initiative laws that require circulators to comply with circulation rules. The common-sense understanding that striking signatures on a petition is not akin to disenfranchising voters is roundly understood by state and federal courts across the country.[135]

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129 *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759, 777 (Mont. 2006) (invalidating 64,463 petition signatures).

130 *In re Initiative Petition No. 379, State Question No. 726*, 155 P.3d 32, 46 (Okla. 2006) (invalidating more than 57,000 petition signatures).

131 *Brousseau v. Fitzgerald*, 675 P.2d 713, 715 (Ariz. 1984) (invalidating hundreds of petition signatures).

132 *State ex rel. Schmelzer v. Board of Elections of Cuyahoga County*, 440 N.E.2d 801, 803-04 (Ohio 1982) (invalidating 50 petition signatures).

133 *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 82 (Me. 2002) (invalidating 14,506 petition signatures).

134 *Benca v. Martin*, 500 S.W.3d 742, 748-51 (Ark. 2016) (invalidating 12,104 petition signatures).

135 *See e.g. Citizens Committee for the D.C. Video Lottery Terminal Initiative v. District of Columbia Bd. of Elections and Ethics*, 860 A.2d 813, 818 (D.C. Cir. 2004) (invalidating all signatures in petitions "does not disenfranchise legitimate voters, as the Citizens

The superior court came to its erroneous conclusion that removing 19OGTX from the upcoming general election ballot constituted the disenfranchisement of signatories to the petition because of dicta in *North West Cruiseship Association of Alaska, Inc. v. State*. That *dicta* appears to equate the invalidation of signatures in a petition to the "disenfranchisement" of voters. This unfortunate dicta is at odds with the uncontested holdings of *Taxpayers United* and *Kendall* that signing a petition is not akin to voting and the invalidation of signatures on a petition does not disenfranchise anyone, including the signatories to the petition. It is also contrary to the holdings of the state and federal courts above that have invalidated all signatures contained in petitions because circulators did not follow state statutory requirements while rejecting the rhetoric that they were disenfranchising voters. This case presents a vehicle for the Court to clarify this imprecise and misleading dicta.

At issue in *North West Cruiseship Association* was the Division of Elections' application of its former **regulation**[136] that provided signatures contained in a petition booklet "will not be counted in determining the sufficiency of the petition if the . . . circulator did not complete the information on each signature page [disclosing who, if anyone, was paying the circulator]."[137] Among all of the petition booklets circulators submitted in support of the initiative, were two booklets that each had one page that did

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Committee argues, but rather upholds the integrity of an initiative process") (original brackets, citations and quotation marks omitted).

136 *North West Cruiseship Association of Alaska, Inc. v. State*, 145 P.3d 573, 578 (Alaska 2006) (quoting former 6 AAC 25.240(g)(2) (2006)).

137 Former 6 AAC 25.240(g)(2)).

not include the disclosure of who was paying the circulator.[138] The Division invalidated just the signatures on those two pages, and kept the other signatures contained in the two booklets.[139] The Court, applying the reasonable basis standard of review (which applies to an agency's interpretation of its own regulations),[140] concluded that the Division's interpretation of its regulation to only require disqualification of signatures on the pages of the booklet that failed to include the paid-by disclosure was reasonable.[141] The Court stated: "The Division's construction of its own regulations is therefore in line with our directive in *Fischer v. Stout* to seek 'a construction . . . which avoids the wholesale dis[en]franchisement of qualified electors.'"[142]

This dicta is incorrect to the extent that the Court was equating the Division's invalidation of subscriptions in a petition to preventing someone from exercising their right to vote. As federal courts have roundly concluded, signing a petition booklet is not akin to voting. As the *Taxpayers United* and *Kendall* decisions make clear, no signatory to the 19OGTX petition has a right to vote on that proposed initiative. Nor has the Division of Elections "disenfranchised" any signatory who has their signature invalidated pursuant to a content-neutral, nondiscriminatory initiative regulation. The Court should take this opportunity to clarify that a signatory to an initiative does not have any constitutional right

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138 *North West Cruiseship Association of Alaska, Inc.*, 145 P.3d at 578.

139 *Id*.

140 *See Davis Wright Tremaine LLP v. State, Dept. of Administration*, 324 P.3d 293, 299 (Alaska 2014).

141 *North West Cruiseship Association*, 145 P.3d at 578.

142 *Id*. at 578 (citing *Fischer v. Stout*, 741 P.2d 217, 225 (Alaska 1987)).

to vote on the *proposed* initiative and the invalidation of signatures on a petition does not disenfranchise any voter.

Finally, striking the subscriptions improperly certified by the AMT-paid signature gathers does not necessarily mean that the Fair Share initiative will never make its way to voters. Rather, invalidating some of the many signatures gathered by the initiative proponents would leave the campaign group with insufficient signatures to make the 2020 general election ballot, but would not prevent Fair Share from returning to the streets to continue their signature gathering efforts to make the next general election thereafter. Under AS 15.45.140, sponsors have up to one year to file a petition with the lieutenant governor. If the lieutenant governor notifies sponsors that the petition was improperly filed due to insufficient numbers of qualified subscribers, nothing in the statutes prohibits the sponsors from collecting additional signatures and re-submitting their petition. This fact only further undermines the superior court's mistaken concern about disenfranchising voters.

E. The Superior Court Erred by Failing to Declare that the Petitions Submitted by AMT-Paid Circulators Were Not "Properly Certified" Under AS 15.45.130

The superior court erred in not declaring that the petition booklets submitted by AMT-paid circulators were not "properly certified." These petition booklets contained 25,865 signatures that the lieutenant governor may not count in determining whether enough qualifying signatures were submitted for the 19OGTX initiative to be placed on the upcoming general election ballot. This Court should correct this error, and declare that the 25,865 signatures contained in petition booklets submitted by AMT-paid circulators

and improperly certified with a false statement of compliance with AS 15.45.110(c)'s cap on circulator payment should not be counted.

The undisputed evidence in the record below showed: (1) that all 24 AMT-paid circulators were paid in excess of $1 per signature collected, (2) that these circulators submitted 25,865 qualifying signatures contained in petition booklets, and (3) that every AMT-paid circulator falsely stated compliance with AS 15.45.110(c)'s payment cap on their Certification Affidavits.[143] Neither the State nor Fair Share disputed any of this evidence below.[144]

Fair Share's constitutional challenges must be rejected as insufficiently presented because Fair Share presented **no** evidence of the burden AS 15.45.110(c) places on petition circulation. The superior court's ruling that AS 15.45.110(c) is facially unconstitutional must be reversed because it was overreaching to facially invalidate the statute and Fair Share's as-applied challenge lacked any evidence. This Court's proper statutory interpretation of AS 15.45.130 must vindicate that a petition is not "properly certified" simply because the signature gatherer completed the certifications, even if such certifications are false. The word "proper" means something, and should at minimum require that affidavits confirming compliance with AS 15.45.130(1)-(8) must be true and accurate, not false and misleading.

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143 *See* Plaintiffs' Memorandum in Support of Motion for Summary Judgment [Exc. 244], at 2, 7-9 and Exhibit A.

144 *See* Fair Share's Opposition to Plaintiffs' Motion for Summary Judgment [Exc. 225] (July 10, 2020).

Resource Development Council respectfully requests this Court declare that the petitions submitted by AMT-paid circulators that falsely state compliance with AS 15.45.110(c)'s cap on circulator payment are not "properly certified." Further, this Court should declare that as improperly certified, the lieutenant governor may not count subscriptions contained in those petitions. These rulings would invalidate 25,865 subscriptions and require that the lieutenant governor deem the current petition insufficient. Fair Share would then be free to resume signature gathering to pursue its initiative for submission to voters at a later election if it can generate sufficient public interest to do so within the one year allotted for signature gathering under AS 15.45.140.

VII. CONCLUSION

For the foregoing reasons, Resource Development Council asks this Court to reverse the superior court's flawed ruling that AS 15.45.110(c) and AS 15.45.130 are unconstitutional abridgments of the free speech and voting rights of ballot groups and petition subscribers. First Amendment precedent is clear that a state statute governing the circulation of petitions should not be invalidated on free speech grounds unless the challenger of the statute shows it causes an undue burden on the circulation of petitions. Yet, the superior court invalidated AS 15.45.110(c) on free speech grounds without any evidence in the record whatsoever that it causes a burden on ballot circulation in Alaska.

The superior court also invalidated AS 15.45.130 on the novel grounds that signatories to a petition have a constitutional right to vote on the proposed initiative, but federal precedent makes clear there is no such right. A signatory to a petition is not disenfranchised if the initiative is not placed on the ballot, whether circulators gathered one

signature or one million signatures in support of the petition. Finally, Resource Development Council asks this Court to rule that a petition is not "properly certified" within the meaning of AS 15.45.130, if the circulator's Certification Affidavit falsely states compliance with Alaska's cap on circulator payment in gathering the signatures.

DATED at Anchorage, Alaska this 28th day of July, 2020.

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